OETERS v. SUPREME LODGE KNIGHTS OF HONOR.*

Supreme Court of Appeals: At Richmond.

March 15, 1900.

1. PLEADING.—*General issue—Bill of particulars—Restriction of general issue—Burden of proof.* The character of the plea of non-assumpsit is not changed by the specification of the grounds of defence required by the statute. The specification does not convert the general issue into a special plea, nor a negative defence into an affirmative one. Its whole object and effect is to limit the scope and operation of the general issue and to confine the evidence to the particular defences specified. The burden of proof is still on the plaintiff.
2. DEMURRER TO EVIDENCE.—*Case at bar.* The demurrer to the evidence in this cause was properly sustained. The letters of defendant's agent introduced by the plaintiff contain statements relevant to the issue, uncontradicted by any other evidence in the record, and are therefore to be taken as tending to prove the facts therein stated.

Error to a judgment of the Law and Equity Court of the city of Richmond, rendered February 22, 1899, in an action of assumpsit, wherein the plaintiff in error was the plaintiff, and the defendant in error was the defendant. *Affirmed.*

The opinion states the case.

B. T. Crump, for the plaintiff in error.

D. C. Richardson and *G. W. Spooner,* for the defendant in error.

KEITH, P., delivered the opinion of the court.

This case was before us at a former term and is reported in 95 Va. at page 610. It was then reversed, a new trial ordered, and when it was called in the Law and Equity Court the defendant was required, at the request of the plaintiff, to state his grounds of defence under the general issue of *non-assumpsit,* the only plea which had been filed. So much of the grounds of defence thus stated as is sufficient to present the point which is, in our judgment, decisive of this controversy, is as follows:

"That certain assessments for the Widows and Orphans' Benefit Fund of the order of the Knights of Honor, were by said constitution and laws payable on or before the last day of January, 1895, none of which assessments were paid by or on behalf of said Martin Oeters to the officer or person authorized to receive the same within the time

* Reported by M. P. Burks, State Reporter.

limited for the payment thereof as aforesaid, and by reason thereof said Martin Oeters from and after the last day of December, 1894, and until his death stood and was suspended from the order of the Knights of Honor and from beneficial membership therein, and was not in good standing therein at the time of his death, and not entitled to the benefits and privileges thereof, that from and after the time when said Martin Oeters stood and was suspended as aforesaid, to-wit: from and after the last day of December, 1894, no reinstatement was made and no steps taken to procure his reinstatement in accordance with the provisions of the constitution and laws of the Knights of Honor, and he was at no time reinstated."

Non-assumpsit is a negegative plea, and requiring the defendant to state his grounds of defence under that plea does not change its character. The whole object of the statute under which such a requirement is made of a defendant is to give the plaintiff reasonable notice of the particular defence upon which the defendant expects to rely. The issue of *non-assumpsit* is so broad and embraces such a variety of defences that it gives little information to the plaintiff of the case which he is expected to meet. He was often surprised and there was not unfrequently a miscarriage of justice, and it was these evils which the statute was designed to remedy. The character of the plea is in no degree changed. The specification of defences does not convert the general issue into a special plea, or a negative defence into an affirmative one. Its whole object and effect is to limit the scope and operation of the general issue, and to confine the introduction of evidence to the particular defence which the defendant has disclosed. The burden of proof then was still upon the plaintiff.

Upon this pleading the plaintiff, Diedrich Oeters, took the stand and testified that he was a brother of Martin Oeters, who died in 1895, and who held a benefit certificate in the Knights of Honor, which was found among his papers after his death. This benefit certificate was put in evidence, accompanied by the application for membership, and two letters, one written by George H. Reith, Reporter of the Monroe Lodge Knights of Honor, and the other by Marsden Bellamy, Supreme Dictator Knights of Honor, and both addressed to the plaintiff.

Certain interrogatories propounded to the defendant by the plaintiff and the answers thereto, with papers accompanying them, were also introduced—and this was all the evidence. Thereupon the defendant demurred, and the jury rendered a verdict for the plaintiff subject to the demurrer, upon which the court entered a judgment for the defen-

dant. A writ of error was awarded to this judgment upon the petition of Diedrich Oeters.

The contention of the plaintiff in error is, that having introduced evidence showing that Martin Oeters had been admitted as a member of the Knights of Honor, and that a certificate had been duly issued to him as such, the presumption is that he was at the date of the certificate a member in good standing of that order, and this status, this good standing, is presumed to continue until his death, and casts upon those who controvert it the burden of proof to show that at some period between the date of the issue of the benefit certificate and his death his rights as a member in good standing had been forfeited for failure upon his part to comply with his duty to the order.

Upon the part of the defendant it is contended that the right of Diedrich Oeters to recover is conditioned upon the death of Martin Oeters as a Knight of Honor in good standing; that this was a condition precedent to any recovery, and was put in issue by the defendant's plea of *non-assumpsit*, and that the issue of the certificate is not sufficient to maintain the claim upon the part of the plaintiff.

In the view that we take of the case this feature of the controversy need not be decided.

Plaintiff introduced and read in evidence two letters, one from George H. Reith, Reporter of Monroe Lodge, and the other from Marsden Bellamy, Supreme Dictator Knights of Honor, which are as follows:

"MONROE LODGE, No. 735, K. OF H.,
RICHMOND, 10 April, 1895.

MR. D. OETERS:

SIR—Your communication of 28th March, and 6th April received; in reply would state, your brother Martin was not a member of this lodge at the time of his death, having been suspended January 1, for non-payment of December assessments, and never having been reinstated. Yours respectfully,

GEO. H. REITH,
Reporter.

Marsden Bellamy, Esq., Wilmington, N. C., is the Supreme Dictator to whom I would advise you to address any further communication on this subject."

"SUPREME LODGE KNIGHTS OF HONOR, OFFICE SUPREME DICTATOR,
WILMINGTON, N. C., May 13, 1895.

MR. DIEDRICH OETERS, *No. 231 S. Linden St., Richmond, Va.:*

In re claim of Diedrich Oeters.

DEAR SIR:—I received your communication of May 8, claiming the amount of a benefit certificate as the beneficiary of Martin Oeters, at one time a member of Monroe Lodge No. 735, K. of H., at Richmond, Va. I know of no reason why

I should change my opinion previously expressed, with reference to your claim. Martin Oeters was suspended on January 1, 1895, for the non-payment of the December, 1894, assessments. He was not a member of the order at the time of his death and his beneficiary cannot therefore be entitled to any claim under his benefit certificate. The courts of this country have, without an exception, held that a suspended member of a fraternal benefit order, who dies during his suspension, leaves him no claim that his beneficiary can set up against the order of which he may have been a member.

Very truly yours,

MARSDEN BELLAMY,

Supreme Dictator Knights of Honor."

These letters were obviously written in answer to communications from the plaintiff demanding payment of the certificate issued to his brother, Martin Oeters. They could not have been introduced by the defendant, but when offered by the plaintiff were, of course, admitted. The statements made in them are clearly relevant to the issue before the jury, are uncontradicted by any other evidence in the record, and are therefore to be taken as tending to prove the facts stated in them. We need not undertake to measure and define their exact probative force and effect; it is enough that they are declarations of the defendant offered by the plaintiff, and are germane to the issue. *Downer & Co.* v. *Morrison*, 2 Gratt. 250. The case then before the jury was, that Martin Oeters having taken out a benefit certificate in the Knights of Honor was suspended on January 1, 1895, for the non-payment of the assessments made against him in December, 1894, and was, therefore, not a member of the order at the time of his death. See *Knights of Honor* v. *Oeters*, 95 Va. 610.

The judgment of the Law and Equity Court is affirmed.

Affirmed.

NOTE.—That under a plea of *non-assumpsit*, a statement of the ground of the defence, filed by order of court, under authority of the statute, does not shift the burden of proof from the plaintiff to the defendant, even though the stated defence rest upon new and affirmative matter, would seem to be a sound proposition, and fully justified by the reason asssigned by the court.

With the burden of proof on the plaintiff at the beginning—a burden properly held not shifted by the pleadings—the question whether mere proof that the insured was once a member in good standing of the defendant company, was sufficient to sustain a recovery, would seem to be not a difficult one. That there was no presumption of promptness in the payment of dues, or of the insured's having remained a member in good standing until his death, but that this must be proved affirmatively—a ground upon which the court might have based its decision—seems to be a much safer and simpler proposition than that upon which the court chose to rest its conclusions. The ground chosen was, that letters from the defendant company to the representative of the insured, written after the latter's

death—and introduced in evidence by the plaintiff—in which letters the defendant company alleges a lapse of membership for non-payment of dues—constitute evidence of the fact alleged.

The case of *Downer* v. *Morrison*, 2 Gratt. 250, upon which the court relies for this proposition, is an unsatisfactory one at best, so far as the opinion goes, since no reasons are assigned for the decision, but the point ruled in that case differs somewhat from that for which it is cited in principal case. In the former, the question was whether the defendants knew that goods received by them from a third person had been purchased in their name and behalf by such person as their agent, and that the plaintiffs looked to them, and not to such alleged agent, for payment. It was held that a letter from the plaintiffs to the defendants, proved to have been received by the defendants, from the contents of which letter such notice might be inferred, was proper evidence in favor of the plaintiffs, "under the circumstances and for the purposes stated in the bill of exceptions." What this purpose was, the report of the case does not disclose, but we apprehend that the letter was proper evidence to show that the plaintiffs had brought home to the defendants notice that the alleged agent was purchasing in their name.

Why the plaintiff saw fit to introduce the defendant's letters in the principal case does not appear, but it may have been for the purpose of showing, by the admissions therein of the defendant company, that the deceased was a member in good standing up to January 1, 1895, the date of his suspension, as indicated in the letters. To hold that by the introduction of these letters of the defendant, containing admissions against interest, self-serving declarations therein became affirmative evidence in the defendant's behalf, beyond their effect as offsets to the admissions, is extending the rule that admissions must be taken as a whole, to an extreme limit.

The decision on the merits is manifestly right. But, with great deference, it should have been placed on the ground that the plaintiff failed to prove his case, rather than that the defendant prevailed by a preponderance of evidence, consisting of self-serving declarations in the letters quoted in the opinion.

KING V. WILSON.*

Supreme Court of Appeals: At Richmond.

March 29, 1900.

1. LANDLORD AND TENANT.—*Term lease—Renewable—Holding over.* A general covenant for renewal of a lease binds the lessor to renew for one term only, and if the tenant holds over without renewal he becomes a tenant from year to year, and the law presumes the holding to be upon the terms of the former lease so far as applicable to the new situation, and the landlord, on giving the notice required by law, may demand the possession of the premises at the end of any year of such tenancy.

2. LANDLORD AND TENANT.—*Term lease—Renewable—Improvements.* If a contract of lease for a term of years provides that it shall be renewable, or that

*Reported by M. P. Burks, State Reporter.